IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.8061 of 1998

Dated: 23-07-2007

Between:

1. Dunna Bala Sunder Rao (Died) and 4 others.

... Petitioners

and

1. The Government of Andhra Pradesh,
   rep. by the Secretary to Government,
   Social Welfare (F) Department,
   Hyderabad and 4 others.

... Respondents

ORDER:

Questioning G.O.Ms.No.182, Social Welfare (F1) Department, dated 12-12-1997; this writ petition has been filed seeking to quash the same.

2. It is the case of petitioners that Dunna Bala Sundara Rao (first petitioner herein), who belongs to 'Madiga' by caste, was a resident of Nagampalem village, which is in the scheduled area of West Godavari District. It is stated that as per the Notification and Rule

I of the Rules framed under the Agency Tracts Interest and Land Transfer Act, 1917
(for short, 'Act I of 1917') 'Madigas' and some other castes in Godavari Agency Tract were declared as 'hill tribes' with effect from 19-04-1932, which was published in Fort St. George Gazette, Part –I, dated
19-04-1932 at page 710. The first petitioner continued as a 'hill tribe' till the Andhra Pradesh Scheduled Areas Land Transfer Regulation I of 1959 came into force. Since Nagampalem was part of Polavaram Zamin Estate, it was taken over by the Government under the provisions of the Andhra Pradesh Estates (Abolition and Conversion into Ryotwari) Act, 1948. To effect a ryotwari settlement in the schedule lands, the Government of Andhra Pradesh promulgated the Andhra Pradesh Scheduled Areas Ryotwari Settlement Regulation 2 of 1970 (for short, 'Regulation 2 of 1970'). It is further stated that 'Chinnigadu and Gangamma', who are none other than the parents of first petitioner purchased some lands situated at Nagampalem village under registered sale deeds dated 10-10-1917, 02-08-1925, 14-12-1925, 15-08-1928 and 14-06-1931, with the prior permission of the competent authority as provided for under Rule II of the Rules framed under Act I of 1917 from 'hill tribes', as by then they were not 'hill tribes'. On considering the documents placed before him and as per Regulation 2 of 1970, the Settlement Officer, Eluru held that the transfers are valid as they were effected with the prior permission of the competent authority under
Act 1 of 1917, and hence, the provisions of Land Transfer Regulation 1 of 1959 are not valid and accordingly granted ryotwari pattas to first petitioner and other members of his family in respect of the lands in Sy.Nos.171/2, 1713, 172/6, 181/2, 172/3, 180/2, 173, 171/3 admeasuring He.1-44, 0-62.5, 0-70, 152.5, 0.40.5, 3.80, 2.38 and

0.62.5 respectively situated in Nagampalem village vide orders in S.R.No.11(a)/486, 472 and 474/77 (Regulation 2/70) dated 30-07-1977. The said order of the Settlement Officer, Eluru became final, as the same is not questioned before the appellate authority.

3. Be that as it may, based on a complaint made by the Special Deputy Tahasildar (Tribal Welfare) Eluru, third respondent – Special Deputy Collector (Tribal Welfare), Eluru, issued notice to first petitioner and two others to show cause as to why they should not be evicted from the lands known as Pedarevadi, Kunkudu Koyyachenu, Tatikoyyachenu, in Paimaish No.54 situated in Nagampalem village alleging that their possession is hit by the provisions contained in the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1 of 1959 (for short, 'Regulation I of 1959'). To the said notice, first petitioner gave his explanation and thereafter third respondent after enquiring into the matter ordered eviction of first petitioner vide orders in S.R.No.84/77, dated
20-06-1978. Aggrieved by the said order, first petitioner filed an appeal before second respondent – Agent to the Government, West Godavari District, Eluru, who dismissed the appeal by orders dated 30-07-1982 in S.R.A.Nos.48 and 49 of 1979. Assailing the said order, first petitioner filed a revision before first respondent – Government of Andhra Pradesh, Social Welfare Department on 18-09-1982 and during the pendency of the revision, first petitioner filed W.P.No.7191 of 1982 and obtained final orders on 08-10-1982 at the admission stage, wherein this Court directed that he shall not be evicted pending the revision petition before the Government. However, the Government finally dismissed the revision petition filed by first petitioner, vide G.O.Ms.No.182, Social Welfare (F1) Department, dated 12-12-1977,

which is impugned in this writ petition. During the pendency of this writ petition first petitioner died; therefore, petitioner Nos.2 to 5, who are none other than the sons of the deceased first petitioner, were brought on record as his legal representatives.

4. In his counter affidavit first respondent while denying the averments mentioned in the affidavit filed in support of the writ petition contended *inter alia* that on a petition received from one Kalam Nookalaiah,
s/o Seetharamaiah (a tribal) and based on the complaint from the Special Deputy Tahasildar (Tribal Welfare), Eluru, third respondent initiated proceedings under Section 3(2)(a) of Regulation 1 of 1959 as amended by Regulation 1 of 1970 against first petitioner and others. It is mainly contended that though the mother of first petitioner acquired Acs.21-00 of land from her husband she has executed settlement deed to an extent of Acs.25-00 and thereafter first petitioner and his other family members have partitioned an extent of Acs.29-00 of land, therefore there is any amount of discrepancy in regard to the extent and description of land between the lands mentioned in the pattas granted by the Settlement Officer and the lands which they have partitioned. It is further contended that first petitioner has not produced any recorded evidence to show how the land in an extent of Acs.4-00 called as Kunkudu Chelaka was acquired by the father of first petitioner and sold to his wife is not reliable. It is further stated that second respondent has categorically given finding that the local names of the lands referred to in the sale deeds and the settlement deed also differ. Similarly the local names given in the settlement deed and the partition deed are also not one and the same.
It is further stated that the Settlement Officer granted ryotwari pattas to

an extent of Acs.29-00, while the four sons of D. Gangamma are enjoying only Acs.25-00 covered by the settlement deed. There is discrepancy in regard to the extent as well as the description of the lands in question between the petition schedule lands and the lands covered under settlement deed as well as the orders of the Settlement Officer are not one. It is further contended that first respondent based on the material available on record and as there is variation in regard to the extent as well as description of lands between the family settlement and the order of the Settlement Officer, rightly rejected the revision petition as per law, confirming the orders passed by respondents 2 and 3.

5. In his reply affidavit to the counter affidavit of first respondent, third petitioner while reiterating the averments mentioned in the affidavit filed in support of the writ petition states that his ancestors purchased the lands in question under various sale deeds prior to 19-04-1932 with the prior permission of the competent authority under Act 1 of 1917 from the

'hill tribes'. It is further stated that the father of first petitioner sold an extent of Acs.13-00 to his wife under sale deed dated 06-09-1928 and she purchased an extent of Acs.8-00 under sale deed dated 10-12-1917. Thus, she was having an extent of Acs.21-00 and later after the death of her husband she came into possession of an extent of Ac.4-00 purchased by her husband under sale deed dated 05-05-1931 and thus she was having Acs.25-00. It is further stated that first petitioner and his brothers, while making partition of the said extent of Acs.25-00, included the land in an extent of Acs.3-00 belonging to them situated at Gunjavaram village and after survey, the land held by them was measured to an extent of

Acs.29-00 and the Settlement Officer granted ryotwari pattas to an extent of Acs.28-75 equivalent to He.11.50 in his S.R.No.11(a)/486,472 and 474/1977, dated 30-07-1977, and thus there is no variation with regard to the extent and description of the lands in question.

6. Heard learned counsel for petitioners and learned counsel for respondents.

7. Learned counsel for petitioners contended that the parents of the deceased first petitioner belong to 'Madiga' caste and prior to 19-04-1932 as they were not coming under the category of 'hill tribes', they purchased the lands in question from 'hill tribes' prior to 1932 after obtaining necessary permission from the competent authority, as provided for under Rule II of the Rules framed under Act I of 1917, and as such there is no statutory violation in regard to the acquisition of the lands in question by first petitioner and his brothers. He further contended that as they have not violated any rule and as the sales in question are valid, the Settlement Officer rightly granted ryotwari pattas in favour of the first petitioner.

He also contended that there are no discrepancies in regard to the extents and descriptions of the properties mentioned in the ryotwari pattas granted by the Settlement Officer and the Settlement deed executed by the mother of the first petitioner as well as the partition entered into between the first petitioner and his family members. He finally contended that when once patta was granted by the Settlement Officer in favour of first petitioner under Section 9 of Regulation 2 of 1970 and it has become final, it must be presumed that he had satisfied the conditions laid down in the said section and in such a situation taking the proceedings against him under the provisions of

Regulation I of 1959, as amended Regulation I of 1970 for eviction appears to be totally unwarranted.

8. On the other hand, learned Government Pleader appearing for respondents vehemently contended that third respondent after elaborate enquiry and on considering the documents placed before it, has rightly come to the conclusion that there is discrepancy with regard to the extents and description of the properties mentioned in the ryotwari pattas granted by the Settlement Officer and the lands alleged to have been acquired by the mother and father of first petitioner to that of the settlement deed executed by the mother of first petitioner as well as the partition deed entered into between first petitioner and his family members and accordingly ordered cancellation of the pattas granted in favour of first petitioner, which was rightly confirmed by the second and third respondents, therefore, there is no need warranting interference by this Court.

9. In view of the rival contentions it is pertinent to refer the provisions of Act I of 1917. As per the Notification issued under Rule II of the Act I of 1917 in Godavari area, if the transfer of immovable property under
Section 4(1) of Act I of 1917 to or in favour of a person not a member of a
'hill tribe', is a mortgage without possession, the District Munsif having jurisdiction may grant necessary written sanction. In all other cases of transfer, the written permission of the Assistant Agent is necessary.
So from this it is clear that for any transaction in respect of an immovable property between a 'hill tribe' and a 'non hill tribe', permission of the Assistant Agent is essential.

10. There is no dispute that ‘Madigas’ were coming under the purview of ‘hill tribes’ only with effect from 19-04-1932. There is also no dispute that the parents of first petitioner were not ‘hill tribes’ prior to 1932. As the parents of first petitioner were not ‘hill tribes’ by the time they purchased the lands in question, they purchased the lands in question from the
‘hill tribes’, after obtaining necessary permission from the competent authority as provided for under Rule II of the Rules framed under Act 1 of 1917. So, as rightly contended by learned counsel for petitioners that as the parents of deceased first petitioner are not ‘hill tribes’ as on the date of the purchase of the lands in question, from ‘hill tribes’, they had obtained necessary permission from the competent authority as provided for under
Rule II of the Rules framed under Act I of 1917 and as such there is no violation of Rules in regard to the sale transactions entered into by the parents of first petitioner and since there is no violation, the Settlement Officer, Eluru after thorough enquiry passed an order granting ryotwari pattas in favour of first petitioner and his family members as early as in 1977 and the same has become final as no appeal was preferred against the said orders. Only after the said order has become final, the third respondent initiated proceedings against first petitioner and others, which was confirmed by respondents 1 and 2.

11. Now the question is whether the order of the Settlement Officer, Eluru granting ryotwari pattas in favour of first petitioner, prevails over the orders passed by third respondent, which was confirmed by respondents 1 and 2.

12. On the point in issue, learned counsel for petitioners relied on the decisions in **J. SAMBA MURTHY v. AGENT TO THE**

GOVERNMENT[1], in **C. BALAYYAMMA v. GOVT. OF ANDHRA PRADESH**[2], in **N. APPA RAO v. AGENCY DIVISIONAL OFFICER**[3] and in **PANDI RAMULU v. AGENT TO GOVERNMENT, E.G. DISTRICT, KAKINADA**[4].

13. In ***J. Samba Murthy's case (1 supra)***, it was held as follows—

> "The validity and lawfulness of the petitioners possession and occupation has been gone into before granting him patta under 1969 Regulation and this has been done by the Authority competent in that behalf. In such a case it is not open to an authority under the Scheduled Areas Land Transfer Regulation, 1959 to ignore the patta granted under the 1969 Regulation and say that he will go into the validity or otherwise of the petitioner's possession or occupation as the case may be afresh. Once a patta has been granted after due enquiry under Section 3 of the Muttas Abolition Regulation and where such an order has become final, it shall not be open to the Authorities under the Land Transfer Regulation 1959 to ignore the said patta and take proceedings under Section 3 of the 1959 Regulation or to hold that such person is liable to be evicted under the provisions of the 1959 Regulation.

14. In ***C. Balayyamma's case (2 supra)***, it was held as follows—

> "Once pattas have been granted in favour of the petitioners under Section 5 of the A.P. Muttas (Abolition and Conversation into Ryotwari) Regulation, 1969, it must be presumed that they had satisfied the conditions laid down in Section 5. In such a situation, taking proceedings against them under Section 3 of the A.P. Scheduled Areas Land Transfer Regulation, 1959, for eviction appears to be totally unwarranted. In other words, so long as the patta granted under Section 5 of the 1969 Regulation stands, proceedings under Section 3 of the 1959, Regulation appear to be unsustainable in law. Firstly, it is doubtful whether the grant of patta by the settlement officer under the 1969 Regulation can be treated as a transfer. Secondly once it has been held that the petitioners' possession was

not void or illegal under the 1959 Regulation, the said finding, so long as it stands and is operative bars proceedings under Section 3 of 1959 Regulation. If the authorities feel that the grant of pattas under Section 3 of 1969 Regulation is not legal and valid, they must first take proceedings for getting the said orders set aside and then only they can take proceedings under Section 3 of the 1959 Regulation.

15. In ***N. Appa Rao's case (3 supra)***, it was held as follows—

"Patta was granted to the petitioner under Section 7(1) read with Section 9 of Regulation 2 of 1970. That order has become final. Later on at the instance of the self same authorities proceedings were initiated. The petitioner questioned the jurisdiction of the authorities under Regulation 1 of 1959. It is now well settled that when once patta has been granted under Section 7(1) read with 9 of Regulation 2 of 1970 and became final, the possession cannot be said to be unlawful offending Section 3 of Regulation 1 of 1959. Therefore, the action of the authorities is without jurisdiction."

16. In ***Pandi Ramulu's case (4 supra)***, it was held as follows---

"Section 7 of the A.P. Scheduled Areas Ryotwari Settlement Regulation, 1970 lays down that, every ryot in the Scheduled areas to which the Regulation applies shall be entitled to a ryotwari patta in respect of all cultivable lands and Section 9 of the Regulation lays down that the Settlement Officer shall inquire into the nature and history of all lands in respect of which ryotwari patta is claimed and decide it. Whenever an order under Section 9 is passed, if somebody feels aggrieved of the order, he has a remedy under

sub-section (3) of Section 9 under which an appeal can be filed. Once the matter is settled under Section, the only course open to the claimant against such settlement is to file an appeal under sub-section (3) of Section 9. No fresh proceedings can be initiated after an order under Section 7

has been passed."

17. Coming to the case on hand, admittedly, first petitioner's father Chinnigadu purchased the lands in an extent of Acs.21-00 under various registered sale deeds, dated 14-12-1925, 05-05-1931, 20-05-1931 and 14-06-1931. By the time he purchased those lands he was having an extent of Acs.4-00 and thus he was having a total extent of Acs.25-00. His wife Gangamma purchased an extent of Acs.8-00 on 10-10-1917 from one Chavalam Butchayya. She also purchased an extent of Acs.9-00 from her husband, besides another land in an extent of Acs.4-00 on
06-09-1928. Thus she was in possession of Acs.8-00 + Acs.9-00 + Acs.4-00, totalling to Acs.21-00. However, after the death of her husband she came into possession of the land in an extent of Acs.4-00, purchased by her husband under sale deed dated 05-05-1931 and thus she was totally in possession of Acs.21-00 + Acs.4-00 = Acs.25-00 and the same was gifted in favour of her sons i.e. first petitioner and his brothers, vide gift deed dated 11-12-1957 and thereafter the sons partitioned the said property equally on 16-12-1957. That is how the first petitioner's mother was in actual possession of Acs.25-00, but the authorities have miscalculated the same and held that in the light of the said discrepancies, the authorities below have held against first petitioner. No doubt, the partition deed is with regard to Acs.29-00. With regard to this third petitioner in his reply affidavit to the counter affidavit filed on behalf of respondents, has categorically stated that an extent of Acs.3-00 situated in Gunjavaram was also included in the partition and after survey the land held by them was measured an extent of Acs.29-00 and accordingly, the Settlement Officer after thorough enquiry granted ryotwari pattas to the first petitioner and others to an extent of Acs.28-75 cents equivalent to He.11.50 vide

orders in S.R.No.11(a)/486,472 and 474/1977, dated
30-07-1977, and thus there is no variation with regard to the extent and description of the lands in question, and the said factual aspect was not denied by respondents. Further, It is a settled proposition of law that the boundaries shall prevail in an un-surveyed village and whatever is found after survey whether excess or deficit over the extents mentioned in the old sale deeds belongs to the enjoyer. Thus, there is no variation in regard to the extents and description of the lands mentioned in the order passed by the Settlement Officer with that of the family settlement arrived at between first petitioner and his brothers.

18. Further, when once the order passed by the Settlement Officer granting ryotwari patta in favour of first petitioner has become final, in view of over-riding effect given to the provisions of Regulation 2/70 qua certain specified regulations and other extent of law, custom, usage or agreement or any other decree or order of a Court, Tribunal or any authority, the enquiry initiated under Regulation 1/70 would become null and void.
The authority under Regulation 1/59 cannot go into the validity or otherwise of the patta granted under Regulation 2/70, which is nothing but reopening of the matter by the Special Deputy Collector, which is not only illegal but ultra vires and without jurisdiction.

19. For the reasons aforementioned and also in the light of the law declared as above, the G.O.Ms.No.182, (Social Welfare (F1) Department, dated 12-12-1997 passed by first respondent, confirming the orders passed by respondents 2 and 3, is quashed.

20. Accordingly, the writ petition is allowed. No costs.

JUSTICE GOPALAKRISHNA TAMADA

Dt.23-07-2007
GLV

---

[1] 1983(2) (HC) APLJ 96

[2] 1985(II) AWR 153

[3] 1988(2) APLJ 9 (SNC)

[4] 1998(1) ALD 783